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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,999

07/20/2006

Lester M. Schwab

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EXAMINER

PATEL, TARLA R

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/586,999	<b>Applicant(s)</b> SCHWAB, LESTER M.	
	<b>Examiner</b> TARLA R. PATEL	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/19/07.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The amended abstract supplied on separate sheet filed with the amendment on 11/19/07 is acknowledged and has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 has been amended to include the recitation of the claim limitation that "said upper portion unsecured to the patient's limb to permit flexion of the patient's limb joint"; this limitation is new matter, since the originally filed specification fails to disclose the upper portion to be unsecured. On the contrary, the originally filed specification specifically

discloses that the upper portion is to prevent flexion not permit flexion as is now claimed (see page 3, paragraph 0010). The new matter should be deleted from the claims.

4. As to claims 2-7, since they are all dependent from claim 1 they incorporate the new matter and for that reason are also rejected.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Padilla, Jr. (6,053,170).

Padilla, Jr. discloses a splint apparatus for use with intravenous therapy.

The splint apparatus comprises an upper portion (see fig 7, part of user toe area) adapted to be positioned above a patient's limb joint and lower portion ( see fig 7, area above ankle) connected to upper portion at an angle from shown to be 90 degrees, the lower portion (see fig 7, area

above ankle) including a pair of sides (52,53) and a central aperture (58) for passage of an intravenous catheter, lower portion adapted to be positioned below a patient's limb joint (see fig 7), wherein when lower portion is secured below a patient's limb joint, upper portion prevents flexion of the patient's limb joint beyond angle (since, it is made rigid, it is inherently prevents flexion).

With respect to claim 6, Padilla, Jr. discloses channels 57,58, which is covered with rigid surround, is inherently blocking the access to the aperture.

With respect to claim 7, Padilla, Jr. discloses a lower portion including guide (Channels 57,58) for capture of intravenous tubing.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padilla, Jr. in view of Vergano et al. (5,845,643).

Padilla, Jr. substantially discloses the invention, please see rejection to claims 1,6 and 7 above, Padilla, Jr. further disclose that device is for treating a human; however, Padilla, Jr. does not disclose that the device is for use in veterinary medicine, the angle is between 30-60 degrees, the angle is approximately 47 degrees for veterinary use and the angle for human use is approximately 53 degrees.

However , the limitation “for use in veterinary medicine” is a recitation of the intended use of the splint. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Since the limitation have not been positively claimed, it is inherent that the splint of Padilla, Jr. can be use for use in veterinary medicine as required by claim.

Vergano et al. teaches an arm board for vascular access and method of using the same, where the board (splint) has an angle of 30 to 45 degrees (70, column 4 lines 6-9). At the time of invention was made, it would have been obvious matter of design choice to one having an ordinary skill in the

art to have the angle of the Padilla, Jr. splint to be 30-45 degree, as taught by Vergano et al. to have flexibility to user's joint.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Padilla, Jr. in view of Warner (6,276,364).

Padilla, Jr. substantially discloses the invention, please see rejection to claims 1,6 and 7 above; however Padilla, Jr. does not disclose lower portion includes incremental measurement marks to properly size the apparatus to the patient.

Warner teaches a protective sleeve for a chronically implanted intravenous site having portion (15a, column 5 lines 19-21, recitation, where In a patient that is smaller in size the indentation 15a may occur at the end and no cutting will occur) cut in situ or marked. At the time of invention was made, it would have been obvious to one having an ordinary skill in the art to use the teaching of having marked and cut the device of Padilla, Jr., as taught by Warner for sizing the device to patient's need.

### ***Response to Arguments***

10. Applicant's arguments filed 11/19/07 have been fully considered but they are not persuasive.

11. With respect to applicant's argument that Padilla, Jr. discloses an intravenous site protection comprising securing straps maintain the top and bottom members against the extremity of the wearer, thereby effectively immobilizing the extremity or joint, to that the examiner respectfully disagrees. The straps of the Padilla, Jr.'s device do not immobilize the joint, rather the included straps are for securing the device to the limb. Also, the limb (leg) is still capable of being flexed or to have flexion while the Padilla, Jr. device is secured on the calf, since the patient can still bend and/or flex their leg (limb) while device is secured on the calf of the patient.

12. Further, applicant argues that the upper portion permits flexion of patient's limb joint for increased patient comfort, but prevents flexion of the patient's limb joint beyond said angle to prevent interference with the intravenous catheter and disruption of catheter flow; to that the examiner respectfully disagrees. It is the position of the examiner that the device of Padilla, Jr., while including straps for securing the device to the limb, the limb/leg will still have flexion in a direction that would allow for no interference with the intravenous catheter and disruption of catheter flow.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP  
/Tarla R Patel/  
Examiner, Art Unit 3772

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772